

STATEMENT OF
THE HONORABLE JAMES L. OBERSTAR
SUBCOMMITTEE ON AVIATION
HEARING ON
THE PROPOSED UNITED-CONTINENTAL MERGER: POTENTIAL EFFECTS FOR CONSUMERS
AND THE INDUSTRY
JUNE 16, 2010

I thank Chairman Costello and Ranking Member Petri for holding this hearing. We will hear testimony today on an airline merger of great significance to the traveling public: a combination of two large airlines that will create a mega-carrier, the world's largest by several measures. I welcome our witnesses, who include the chief executives of United and Continental, labor group leaders, and industry and legal experts. I look forward to hearing their testimony and to exploring the merger's effects for those who pay for, and depend on, airline service.

At the Aviation Subcommittee's 2008 hearing on the merger of Delta Air Lines and Northwest Airlines, I ended my opening statement with an oft-quoted admonition from the poet George Santayana, who said, "Those who cannot remember the past are condemned to repeat it." It is only fitting that we begin this hearing with the same admonition, because we are again in this room to receive evidence on a merger that will likely reduce competition, reduce choice, and increase air fares. Moreover, it will place the future welfare of our delicate airline industry – a necessary and indispensable industry – in the hands of three mega-carriers. United

and Continental are repeating a strategic move that many airlines before them have made but that has brought sustained success to none.

When Delta Air Lines and Northwest Airlines merged in 2008, I cautioned that their merger would lead to further mergers and set in motion a chain of events that would leave the domestic and international markets dominated by three mega-carriers. Mega-carriers build concentrations of market share and levy air fare increases with impunity. We are approaching a point where they may become too big to fail. Mega-carriers do not serve the public interest.

The larger an airline becomes, the greater its ability to wield its market share to the detriment of passengers. United and Continental combined would hold approximately 20 percent of the U.S. domestic market share. That share would be more than the share of any other carrier, by most measures. The way airline competition works today, when established carriers control markets, those carriers follow their competitors' fare changes so that the fares are identical and passenger choice is limited. This phenomenon is worse in a market dominated by only a few major airlines with incentives not to compete. As the Department of Transportation (DOT) aptly stated, "[e]conomic theory teaches that the competitive outcome of a duopoly is indeterminate: the result could be either intense rivalry or comfortable

accommodation, if not collusion, between the duopolists.” Airline deregulation was never intended to pit strong competition against an airline’s best interests.

When I voted for airline deregulation in 1978, I did not vote for an industry of mega-carriers. I voted for vibrant competition among airlines, competition that would encourage innovation in schedules, pricing, and services. I voted for the promise of an industry in which carriers would have every incentive to create value through intense competition. There are only a few of us left who voted in this Committee room on deregulation in 1978. When I cast my vote, I expected the antitrust laws to be vigorously enforced, as did others.

This merger’s consequences for consumers and employees are practically certain. It will reduce consumer choice and increase air fares – significantly, in some cases – among major U.S. and world markets, from Washington, D.C., to Beijing. With abundant support, the Department of Justice (DOJ) has found that air fares are likely to increase significantly when the number of competitors in any given market is reduced from three to two or from two to one.

The United-Continental merger will erode competition in international markets, as well, including one market in which the DOJ previously found that United

and Continental, if combined, would attain an anticompetitive market share. United and Continental already enjoy an extraordinary privilege: immunity from enforcement of clearly established Federal antitrust law. Under cover of that immunity, United, Continental, and their foreign Star Alliance partners collude on pricing and schedules in ways that, without immunity, would amount to violations of antitrust law. After this merger, the combined airline and its Star Alliance partners would be able to divide up transatlantic traffic with their SkyTeam and Oneworld alliance counterparts. A real danger exists that mega-carriers enjoying such antitrust privileges will engage in cartel pricing; consumers traveling across the North Atlantic will be at their mercy.

To those who say low-cost carriers provide a buffer, I say, show me how to fly Southwest to London, or JetBlue to Duluth, or AirTran to Lubbock. Our network legacy carriers fill a niche unfilled by low-cost carriers. In many of the markets that matter, low-cost carriers will not offset the fare increases that will result from this merger.

This merger will have consequences for employees, as well. United and Continental employ roughly 89,000 people in hubs and at small airports across the country. We must ensure that this merger does not come at the expense of those employees or jeopardize any jobs during these delicate economic times.

I look forward to hearing from the chief executives of United and Continental. I am skeptical that the business decision they have announced will be good for consumers, but I hope they will be able to demonstrate to the contrary. I look forward, too, to hearing from our labor group leaders and airline industry experts on their outlook for the future of the industry. I see that we have an antitrust expert, Mr. Albert Foer, who will be testifying, and I am eager to hear his thoughts on how the arguments in favor of this merger stack up against our antitrust laws.

Mergers may or may not create value for airlines and their shareholders. The storied history of airline mergers tends to suggest they do not. But whatever the motivation of this merger, we must keep a laser focus on its effects for consumers and employees. The American traveling public deserves nothing less than a vibrant, competitive, profitable, and safe air transportation system. We must work to ensure that the industry delivers what the public demands and requires. We must not repeat the mistakes of the past by ignoring this merger's potential effects for consumers, employees, and the industry as a whole.